

SERVICE DATE – DECEMBER 17, 2015

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. FD 35963 (Sub-No. 1)

BNSF RAILWAY COMPANY—TEMPORARY TRACKAGE RIGHTS  
EXEMPTION—UNION PACIFIC RAILROAD COMPANY

Digest:<sup>1</sup> This decision authorizes the expiration of certain Board-approved rights by one carrier to operate over the lines of another carrier, even though such rights typically continue indefinitely.

Decided: December 11, 2015

By petition filed on October 30, 2015, BNSF Railway Company (BNSF) requests that the Board partially revoke the trackage rights class exemption, 49 C.F.R. § 1180.2(d)(7), as it pertains to the trackage rights arrangement exempted in Docket No. FD 35963,<sup>2</sup> to permit those trackage rights to expire at midnight on December 31, 2018. BNSF states that the trackage rights arrangement exempted in Docket No. FD 35963 is intended to permit BNSF to move empty and loaded ballast trains to and from the ballast pit located at Elsey, Cal. The parties' agreement provides that the trackage rights are temporary and are to expire at midnight on December 31, 2018.

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<sup>1</sup> The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

<sup>2</sup> In that docket, on October 30, 2015, BNSF filed a verified notice of exemption under the Board's class exemption procedures at 49 C.F.R. § 1180.2(d)(7). The notice addressed an agreement in which Union Pacific Railroad Company (UP) granted local trackage rights to BNSF over UP's lines extending between: (1) UP milepost 93.2 at Stockton, Cal., on UP's Oakland Subdivision, and UP milepost 219.4 at Elsey, Cal., on UP's Canyon Subdivision, a distance of 126.2 miles; and (2) UP milepost 219.4 at Elsey and UP milepost 280.7 at Keddie, Cal., on UP's Canyon Subdivision, a distance of 61.3 miles. See BNSF Ry.—Temporary Trackage Rights Exemption—Union Pac. R.R., FD 35963 (STB served Nov. 13, 2015). BNSF notes in its petition that, because the trackage rights covered by the notice in Docket No. FD 35963 are "local" rather than "overhead" rights, they do not qualify for the Board's class exemption for temporary trackage rights at 49 C.F.R. § 1180.2(d)(8).

## DISCUSSION AND CONCLUSION

Although BNSF and UP have expressly agreed on the duration of the proposed temporary trackage rights arrangement, trackage rights approved under the class exemption at 49 C.F.R. § 1180.2(d)(7) typically remain effective indefinitely, regardless of any contract provisions. Occasionally, however, trackage rights exemptions have been granted for a limited time period rather than in perpetuity. Indeed, the Board allowed the parties to limit the term of local trackage rights on these lines when it granted a similar BNSF petition in 2014. See BNSF Ry.—Temporary Trackage Rights Exemption—Union Pac. R.R., FD 35808 (Sub-No. 1) (STB served Apr. 10, 2014).

Under 49 U.S.C. § 10502, the Board may exempt a person, class of persons, or a transaction or service, in whole or in part, when it finds that: (1) continued regulation is not necessary to carry out the rail transportation policy (RTP) of 49 U.S.C. § 10101; and (2) either the transaction or service is of limited scope, or regulation is not necessary to protect shippers from the abuse of market power.

BNSF's trackage rights have already been authorized under the class exemption at 49 C.F.R. § 1180.2(d)(7). See R.R. Consol. Procedures—Trackage Rights Exemption, 1 I.C.C.2d 270 (1985). Granting partial revocation here would eliminate the need for a second pleading seeking discontinuance when the agreement expires, thereby promoting RTP policy goals at 49 U.S.C. §§ 10101(2), (4), (5), (7), and (15). See BNSF Ry.—Temporary Trackage Rights Exemption—Union Pac. R.R., FD 35808 (Sub-No. 1), slip op. at 2 (STB served Apr. 10, 2014). Moreover, limiting the term of the trackage rights is consistent with the limited scope of the transaction previously exempted and would have no adverse impact on shippers, because the trackage rights that are the subject of the exemption are solely to allow BNSF to move empty and loaded ballast trains to and from the ballast pit in Elsey for use in BNSF's maintenance-of-way projects. Therefore, we will grant the petition and permit the trackage rights exempted in Docket No. FD 35963 to expire at midnight on December 31, 2018.

To provide the statutorily mandated protection to any employee adversely affected by the discontinuance of trackage rights, we will impose the employee protective conditions set forth in Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho (Oregon Short Line), 360 I.C.C. 91 (1979).

It is ordered:

1. The petition for partial revocation is granted.
2. Under 49 U.S.C. § 10502, the temporary trackage rights described in Docket No. FD 35963 are exempted, as discussed above, to permit the trackage rights to expire at midnight on December 31, 2018, subject to the employee protective conditions set forth in Oregon Short Line, 360 I.C.C. 91 (1979).
3. Notice will be published in the Federal Register on December 17, 2015.

4. This decision is effective on January 16, 2016. Petitions to stay must be filed by December 28, 2015. Petitions for reconsideration must be filed by January 6, 2016.

By the Board, Chairman Elliott, Vice Chairman Begeman, and Commissioner Miller.